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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,	)	3:73-cv-00127-MMD-WGC
	)	
Plaintiff,	)	
	)	<b>COMPSTON FAMILY 1982</b>
WALKER RIVER PAIUTE TRIBE,	)	<b>TRUST'S ANSWER TO AMENDED</b>
	)	<b>COUNTERCLAIM OF THE</b>
Plaintiff-Intervenor,	)	<b>UNITED STATES OF AMERICA</b>
	)	<b>FOR WATER RIGHTS ASSERTED</b>
v.	)	<b>ON BEHALF OF THE WALKER</b>
	)	<b>RIVER PAIUTE INDIAN TRIBE</b>
WALKER RIVER IRRIGATION DISTRICT,	)	
a corporation, et al.,	)	
	)	
Defendants.	)	

Counterdefendant, Compston Family 1982 Trust ("Compston"), hereby answers the Amended Counterclaim of the United States of America for Water Rights Asserted on Behalf of the Walker River Paiute Indian Tribe filed herein on May 3, 2019 (the "Second Amended Counterclaim") as follows:

**INTRODUCTION**

1. This Answer is made subject to the provisions of the Stipulated Scheduling Order and Discovery Plan dated March 7, 2019 (ECF No. 2437) which provides that only answers and affirmative defenses are allowed, and which also provides that no counterclaims

1 are required or permitted. In addition, no party is to respond to any allegation contained in the  
2 United States' First Amended Counterclaim (ECF No. 59) at pages 13 – 31, paragraphs 20 - 73.  
3 The allegations contained in paragraph 1 of the Second Amended Counterclaim consist of legal  
4 conclusions that do not require a response. To the extent that a response is required, Compston  
5 denies them.  
6

### 7 **JURISDICTION**

8 2. The allegations contained in paragraph 2 of the Second Amended Counterclaim  
9 consist of legal conclusions that do not require a response. To the extent that a response is  
10 required, Compston denies them.

### 11 **PARTIES**

12 3. On information and belief, Compston admits the allegations contained in  
13 paragraph 3.  
14

15 4. Compston admits that it is a claimant to the water of the Walker River and its  
16 tributaries and also to groundwater. Compston is without sufficient information to admit or  
17 deny the remaining allegations of paragraph 4, and on that basis, denies them.

### 18 **GENERAL ALLEGATIONS**

19 5. Compston admits that the final judgment entered in *United States of America v.*  
20 *Walker River Irrigation District, et al.*, In Equity No. C-125 (D. Nev.) on April 14, 1936, as  
21 amended on April 24, 1940 (the "Decree"), includes a right for the United States of America.  
22 The Decree is the best evidence of its provisions, and speaks for itself. Compston denies that  
23 the allegations in paragraph 5 of the Second Amended Counterclaim correctly describe those  
24 provisions, and on that basis, denies them.  
25

26 6. The allegations contained in paragraph 6 of the Second Amended Counterclaim  
27 consist of legal conclusions that do not require a response. To the extent a response is required,  
28 Compston denies them.



**SECOND CLAIM FOR RELIEF**

**Lands Restored and Added to Walker River Reservation**

13. Compston realleges and reincorporates herein by reference each and every response contained in paragraphs 1 through 12 of its Answer to the Second Amended Counterclaim as if fully set forth herein.

14. The allegations in paragraph 14 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, Compston denies them.

15. The allegations in paragraph 15 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, Compston denies them.

16. The allegations in paragraph 16 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, Compston denies them.

**THIRD CLAIM FOR RELIEF**

**Groundwater for All Lands Within the Walker River Reservation**

17. Compston realleges and reincorporates herein by reference each and every response contained in paragraphs 1 through 16 of its Answer to the Second Amended Counterclaim as if fully set forth herein.

18. The allegations in paragraph 18 of the Second Amended Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, Compston denies them.

19. Compston lacks sufficient information to admit or deny the allegations set forth in paragraph 19 of the Second Amended Counterclaim, and on that basis denies them.

1           20.     The allegations contained in paragraph 20 of the Second Amended Counterclaim  
2 consist of legal conclusions that do not require a response. To the extent a response is required,  
3 Compston denies them.

4                                   **AFFIRMATIVE DEFENSES**

5                                   **First Affirmative Defense**

6  
7           The Second Amended Counterclaim and each and every Claim for Relief stated therein  
8 fails to state a claim upon which relief may be granted.

9                                   **Second Affirmative Defense**

10          The Second Amended Counterclaim and each and every claim for relief stated therein  
11 is, by reason of the Decree, barred by the doctrines of claim preclusion, issue preclusion and/or  
12 other principles of finality as set forth in *Nevada v. United States*, 463 U.S. 110 (1983) and in  
13 *Arizona v. California*, 460 U.S. 605 (1983).

14                                   **Third Affirmative Defense**

15  
16          “General Principles of finality and repose” that apply to water rights decrees, *Arizona*  
17 *v. California*, 460 U.S. 605, 619 (1983), preclude Paragraph XIV of the Decree from being  
18 construed as authorizing the modification of the Decree to recognize additional reserved water  
19 rights for the Tribe that were not recognized and established in the Decree.

20                                   **Fourth Affirmative Defense**

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22          The Second Amended Counterclaim and each and every claim for relief stated therein is  
23 barred by the doctrine of laches.

24                                   **Fifth Affirmative Defense**

25          The Second Amended Counterclaim and each and every claim for relief stated therein is  
26 barred by the doctrine of estoppel.

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**Sixth Affirmative Defense**

Through commencement and resolution of claims against the United States by the Walker River Paiute Tribe, the Second Amended Counterclaim and each and every claim for relief stated therein have been waived, and are therefore extinguished.

**Seventh Affirmative Defense**

A federal reserved water right exists only if “necessary” to fulfill the *primary* purposes – as opposed to the *secondary* purposes – of the federal reserved lands, *United States v. New Mexico*, 438 U.S. 696, 700-702 (1978), and only to the extent necessary to meet the “minimal need” of the federal reservation, “no more.” *Cappaert v. United States*, 426 U.S. 200, 141 (1976). The United States has failed to allege or show that the water granted to the United States in the Walker River Decree is insufficient to meet the primary purposes for which the lands were added to the Walker River Indian Reservation, and that the additional water from any source is “necessary” to fulfill the primary purposes of such added lands. Thus, the United States does not have a reserved right to additional water for the lands that have been added to the reservation.

**Eighth Affirmative Defense**

Under the implied reservation of water doctrine, the United States may not reserve water from a water source that is not within the lands which are being reserved. To the extent that the Second Amended Counterclaim and any claim for relief therein seeks water from a source for lands which did not include that water source at the time of reservation, no such claim can be made.

**Ninth Affirmative Defense**

1           The primary purpose of adding lands to the Walker River Indian Reservation from 1918  
2 to 1972 was for purposes of dry land grazing, which requires no water for irrigation and only  
3 sufficient water to water livestock which can be reasonably grazed on such lands.

4                           **Tenth Affirmative Defense**

5           The implied reservation of water rights doctrine does not apply to conservation storage  
6 of water, including, but not limited to, storage for any purpose, including carryover and  
7 conservation.  
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9                           **Eleventh Affirmative Defense**

10          The implied reservation of water rights doctrine does not apply to groundwater.

11                          **Twelfth Affirmative Defense**

12          If the implied reservation of water rights doctrine applies to groundwater, it does so  
13 only in circumstances where it is established that there is insufficient surface water to otherwise  
14 satisfy the claimed reserved water right. The water right provided for the Walker River Indian  
15 Reservation by the Decree is sufficient to accomplish the purposes for which lands were added  
16 to the Reservation.  
17

18                          **Thirteenth Affirmative Defense**

19          The United States had no power, after Nevada became a State on October 31, 1864, to  
20 reserve water for the benefit and use of federal land.  
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22                          **Fourteenth Affirmative Defense**

23          In withdrawing from the public domain some or all of the lands added to the Walker  
24 River Indian Reservation, Congress provided that the withdrawal should not affect existing  
25 legal rights, or valid rights, which includes, but is not limited to, the right of the State of  
26 Nevada to control and regulate the use of its waters.  
27

28                          **Fifteenth Affirmative Defense**

1 To the extent that this Court determines that any addition of land to the Walker River  
2 Indian Reservation resulted in the reservation of water, the use of that water must be restricted  
3 to the use impliedly contemplated at the time the land was added to the Reservation, and any  
4 change to that use is subject to the provisions of Paragraph X of the Decree and to the  
5 Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use  
6 or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance  
7 With California Fish and Game Code Section 5937 and Other Provisions of California Law as  
8 approved by the Court on June 3, 1996.  
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10 **Sixteenth Affirmative Defense**

11 Compston reserves the right to amend this answer as additional affirmative defenses are  
12 discovered.  
13

14 WHEREFORE, Compston prays for judgment against the United States as follows:

- 15 1. For the dismissal of the Second Amended Counterclaim;
- 16 2. For its costs of suit allowed by law; and
- 17 3. For such other and further relief as the Court deems just and proper.

18 Dated: August 1, 2019  
19

20 By: / s / Gordon H. DePaoli  
21 Gordon H. DePaoli, NSB 195  
22 Dale Ferguson, NSB 4986  
23 Domenico R. DePaoli, NSB 11553  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Woodburn and Wedge and that on the 1st day of August, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/ s / Holly Dewar

Holly Dewar